

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAURICE TOLBERT, #40943-039,

Plaintiff,

v.
CASE NO. 5:10-CV-12506
HONORABLE JOHN CORBETT O'MEARA

GARY JONES, ET AL.,

Defendants.

**ORDER ON REMAND GRANTING PLAINTIFF'S MOTION
TO EXTEND THE TIME FOR FILING OF A NOTICE OF APPEAL**

This matter is before the Court on remand from the United States Court of Appeals for the Sixth Circuit to consider Plaintiff's notice of appeal, dated August 16, 2010 and filed on August 18, 2010, as a motion to extend the time for filing a notice of appeal concerning the Court's July 9, 2010 summary dismissal of his pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983. In support of his filing, Plaintiff asserts that he mailed two prior notices of appeal in July, 2010, but those notices were apparently not received or docketed. The Court's review of its records reveals no such submissions or filings.

Federal Rule of Appellate Procedure 4(a)(5) provides that the district court may extend the 30-day time period for filing a notice of appeal if:

- (i) the party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) . . . that party shows excusable neglect or good cause.

Fed. R. App. P. 4(a)(5). Plaintiff filed his motion within 60 days of the Court's dismissal of his

complaint and has thus satisfied the time requirement of Federal Rule of Appellate Procedure 4(a)(5). Additionally, he has shown excusable neglect or good cause for his request for an extension of time. The Court will therefore grant him an extension of time. The Court notes, however, that it finds no reason to reconsider its previous decisions dismissing the complaint and denying leave to proceed without prepayment of fees on appeal.

Accordingly,

IT IS ORDERED that Plaintiff's motion to extend the time for filing a notice of appeal is **GRANTED**.

s/John Corbett O'Meara
United States District Judge

Date: October 6, 2010

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, October 6, 2010, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager